

**ORDINANCE NO. 99-67-CL**

**AN ORDINANCE OF TIPPECANOE COUNTY, INDIANA,  
AUTHORIZING THE ISSUANCE AND SALE OF BONDS OF THE  
COUNTY FOR THE PURPOSE OF PROVIDING FUNDS TO BE APPLIED  
ON THE COST OF THE ACQUISITION AND CONSTRUCTION OF  
LOCAL AND ARTERIAL ROAD SYSTEMS AND OTHER MATTERS  
CONNECTED THEREWITH, TOGETHER WITH THE INCIDENTAL  
EXPENSES IN CONNECTION THEREWITH AND ON ACCOUNT OF  
THE ISSUANCE OF BONDS THEREFOR, INCLUDING THE ISSUANCE  
OF NOTES IN ANTICIPATION OF BONDS**

WHEREAS, a county is authorized by IC 5-1-14, IC 8-14-2 and IC 36-2-6, as in effect on the date of issuance of the bonds authorized herein, to issue bonds (i) to procure moneys to be used in the exercise of the powers of the county and (ii) to procure moneys for the payment of county debts;

WHEREAS, the County Council of Tippecanoe County, Indiana (the "County") has found that it would be in the best interests of the County and its residents to provide for the cost of certain arterial road system (as defined in IC 8-14-2-1) and local county road (as defined in IC 8-14-2-1) projects as more fully described in Exhibit A attached hereto and incorporated herein by reference (the "Projects");

WHEREAS, the Board of Commissioners of the County has determined that the County needs the Projects and has obtained estimates of the costs for the Projects and will advertise for and receive bids for the Projects, which bids are subject to the County's obtaining funds to pay for the Projects; that on the basis of the estimates, the preliminary costs of the Projects, including incidental expenses, is in an amount not exceeding \$2,300,000;

WHEREAS, the County Council now finds that cost estimates and plans and specifications for the Projects will be approved by the County Commissioners and by all governmental authorities having jurisdiction, particularly the State of Indiana;

WHEREAS, the County Council now finds that funding the Projects is necessary and will be of general benefit to the County and its residents;

WHEREAS, the County Council finds and has determined that the estimated cost of the Projects, together with the incidental expenses in connection therewith and on account of the financing therefor, should be financed, in whole or in part, by the issuance of bond anticipation notes ("BANs") and, if necessary, by revenue bonds;

WHEREAS, the bonds to be issued pursuant to this ordinance are to be issued subject to the provisions of the laws of the State of Indiana, including, without limitation, IC 36-2-6, IC 8-14-2 and IC 5-1-14 as in effect on the date of delivery of the bonds (collectively, the "Act"), and the terms and restrictions of this ordinance;

WHEREAS, the total indebtedness of the County, including the amount of the bonds authorized by this ordinance (assuming all such indebtedness constitutes debt in the constitutional sense under the Indiana Constitution), is \$9,350,000 and does not exceed any constitutional or statutory limitations on indebtedness, and the net assessed valuation of taxable property in the County, as shown by the last complete and full assessment for state and county taxes is \$1,506,369,955; and

WHEREAS, the County Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of the BANs and bonds have been complied with in accordance with the provisions of the Act;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF TIPPECANOE COUNTY, INDIANA THAT:

Section 1. The County proceed with the Projects as set forth in this ordinance. The cost of the Projects funded with proceeds of the bonds or BANs shall not exceed the sum of \$2,300,000 plus investment earnings on the BAN and bond proceeds, without further authorization from this County Council. The Projects shall be completed and the BANs or bonds herein authorized shall be issued pursuant to and in accordance with the Act.

Section 2. (a) The County shall issue its BANs for the purpose of procuring interim financing to apply on the cost of the Projects. The County shall issue its BANs in an amount not to exceed Two Million Three Hundred Thousand Dollars (\$2,300,000) to be designated "Bond Anticipation Notes of \_\_\_\_\_," to be completed with the year in which the BANs are issued. The BANs shall be sold at not less than 99.7% of their par value, shall be numbered consecutively from 1 upward, shall be in multiples of \$1 with a minimum denomination of \$5,000 as set forth in the Purchase Agreement for the BANs, shall be dated as of the first day of the month in which they are sold or the date of delivery thereof, and shall bear interest at a rate not to exceed 6% per annum (the exact rate or rates to be determined through bidding or negotiations with the purchaser of the BANs). Principal and interest on the BANs shall be payable (i) upon maturity, (ii) semiannually on the first day of the month selected by the Auditor at the advice of the County's financial advisor, or (iii) monthly on the first day of each month as selected by the Auditor at the advice of the County's financial advisor, beginning no later than the first day of the second month following the issuance of the BANs, as set forth in the Purchase Agreement for the BANs. Interest on the BANs shall be calculated on the basis of a year consisting of twelve thirty-day months. The County may receive payment on the BANs in installments, and in that case, interest on the BANs will accrue on each advance from the date that advance is received by the County. The BANs will mature no later than two years after their date of delivery. The BANs are subject to renewal or extension at an interest

rate or rates not to exceed 6% per annum (the exact rate or rates to be negotiated with the purchaser of the BANs or determined by bidding). The term of the BANs and all renewal BANs may not exceed five years from the date of delivery of the initial BANs. The BANs shall be registered in the name of the purchasers thereof.

The BANs shall be issued pursuant to the Act. The principal of and interest on the BANs shall be payable from the issuance of revenue bonds and from funds deposited in the County's local road and street account ("Road and Street Account"). The bonds will be payable solely out of funds held in the Road and Street Account.

(b) The County shall issue, if necessary, its bonds in an amount not to exceed \$2,300,000 to be designated "Local Road and Street Revenue Bonds of \_\_\_\_", to be completed with the year in which the bonds are issued, for the purpose of procuring funds to apply on the cost of the Projects, refunding the BANs, if issued, and issuance costs. The bonds shall be issued and sold at a price not less than 99.7% of the par value thereof in fully registered form in any denomination numbered consecutively from 1 up, originally dated as of the first day of the month in which they are sold or the date of delivery, as determined by the County Auditor, and shall bear interest at a rate or rates not exceeding 6% per annum (the exact rate or rates to be determined by bidding). Principal and interest shall be either payable semiannually or monthly or the first day of each month selected by the County Auditor with the advice of the County's financial advisor, as set forth in the Purchase Agreement for the bonds. The bonds shall mature over a period not to exceed two (2) years and in amounts which achieve as level debt service as practicable taking into account a minimum denomination of \$1.

Each bond shall bear the original date, which shall be the first day of the month in which the bonds are sold or the date of delivery, as determined by the County Auditor, and the date of authentication of such bond. Bonds authenticated on or before the fifteenth day of the month preceding the first payment date shall bear interest from the original date. Each bond authenticated thereafter shall bear interest from the payment date to which interest has been paid next preceding the date on which it is authenticated, unless it is authenticated on or after the sixteenth day of the month immediately preceding an interest payment date, in which case it shall bear interest from such payment date. If at the time of authentication of any bond, interest is in default thereon, such bond shall bear interest from the date to which interest has been paid in full.

(c) The Board of Commissioners and the County Auditor are authorized and directed to appoint a qualified banking institution to serve as Registrar and Paying Agent ("Registrar" or "Paying Agent") for the bonds and the BANs, which shall be charged with the responsibility of

authenticating the bonds and the BANs, as the case may be. The County Auditor is hereby authorized to enter into such agreements or understandings with such bank as will enable the bank to perform the services required of a Registrar and Paying Agent. The County Auditor is further authorized to pay such fees as the bank may charge for the services it provides as Registrar and Paying Agent, and such fees may be paid from the fund established to pay the principal of and interest on the bonds and the BANs. Upon agreement between the County and the purchaser for the bonds or the BANs, as the case may be, the County Auditor may be designated as the Registrar and Paying Agent, and, in that case, shall be charged with all responsibilities of a Registrar and Paying Agent.

(d) All payments of principal and interest of the bonds and the BANs (except for the final payments) shall be payable by check mailed by first class mail one business day prior to the payment date or delivered on the payment date to the person in whose name such bond or BAN is registered on the bond register maintained at the office of the Registrar and Paying Agent as of the fifteenth day of the month preceding such payment date. The Paying Agent shall be instructed to wire transfer payments by 1:00 p.m. (New York City Time) so such payments are received at the depository by 2:30 p.m. (New York City Time). The final payment of principal and interest on the BANs and the bonds shall be payable upon presentation of the BANS or bonds, respectively, at the principal office of the Registrar and Paying Agent in lawful money of the United States of America. The BANs and bonds are transferable by the registered owner at the principal office of the Registrar and Paying Agent upon presentation and surrender of a BAN or bond, and on presentation of a duly executed written instrument of transfer acceptable to the County and Registrar, and thereupon a new BAN or BANs or bond or bonds, as the case may be, of the same aggregate principal amount and maturity and in authorized denominations will be issued to the transferee or transferees in exchange therefor. The BANs and bonds may be exchanged upon surrender at the principal office of the Registrar and Paying Agent, duly endorsed by the registered owner for the same aggregate principal amount of BANs or bonds, respectively, of the same maturity in authorized denominations as the owner may request.

Each of the bonds and BANs shall be executed in the name of the County by the manual or facsimile signatures of the Board of Commissioners and attested by the manual or facsimile signature of the County Auditor who shall affix or imprint by facsimile or any other means the seal of the County to each of the bonds and BANs. The Board of Commissioners and the County Auditor, by the execution of a Signature and No Litigation Certificate, shall adopt as and for their own proper signatures their facsimile signatures appearing on said bonds and BANs. If any official whose signature or facsimile of whose signature shall appear on the bonds or BANs shall cease to

be such officer before the issuance, authentication or delivery of such bonds or BANs, such signature or such facsimile shall, nevertheless, be valid and sufficient for all purposes, the same as if that official had remained in office until delivery.

No BAN or bond shall be valid or obligatory for any purposes, unless and until authenticated by the Registrar. The County and the Paying Agent may deem and treat the person in whose name a BAN or bond is registered on the bond register as the absolute owner thereof for all purposes, notwithstanding any notice to the contrary.

Section 3. (a) The BANs are not prepayable by the County prior to maturity.

(b) The bonds are prepayable by the County, in whole or in part, at any time upon seven days' notice to the owner of the bonds without any premium, plus in each case accrued interest to the date fixed for redemption.

Section 4. The bonds, as to both principal and interest, shall be payable solely from funds held in the Road and Street Account. The BANs are payable solely as described in Section 2(a). The County hereby irrevocably pledges the funds required to be deposited in the Road and Street Account to the payment of the BANs and bonds, such pledge to be effective pursuant to IC 5-1-14-4 without the filing or recording of this ordinance or any other instrument. THE BANS AND THE BONDS ARE WITHIN EVERY LIMIT OF INDEBTEDNESS OF THE COUNTY AS PRESCRIBED BY THE CONSTITUTION OF THE STATE OF INDIANA. THE BONDS DO NOT CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY, BUT ARE PAYABLE SOLELY FROM FUNDS HELD IN THE ROAD AND STREET ACCOUNT. NEITHER THE FULL FAITH AND CREDIT OR THE TAXING POWER OF THE COUNTY IS PLEDGED TO THE PAYMENT OF THE BANS OR THE BONDS.

Section 5. The bonds shall be issued in substantially the following form, all blanks to be filled in properly prior to delivery:

UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF TIPPECANOE

LOCAL ROAD AND STREET REVENUE BOND OF \_\_\_\_\_

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Original Date</u>	<u>Authentication</u>
<u>Date</u>			

Registered Owner:

Principal Sum:

Tippecanoe County, Indiana, a political subdivision organized and existing under the laws of the State of Indiana, for value received, hereby acknowledges itself indebted and promises to pay to the Registered Owner named above in accordance with the schedule attached as Exhibit A hereto, or registered assigns, the Principal Sum set forth above on or before the Maturity Date set forth above and to pay interest thereon at the rate per annum stated above from the payment date next preceding the date of authentication hereof unless this bond is authenticated on or before \_\_\_\_\_, \_\_\_\_\_, in which case interest shall be paid from the Original Date, or unless this bond is authenticated on or after the fifteenth day of the month immediately preceding a payment date and on or before such payment date in which case interest shall be paid from such payment date, which interest is payable on \_\_\_\_\_1<sup>st</sup> and \_\_\_\_\_1<sup>st</sup> **[on the first day of each month]**, beginning on \_\_\_\_\_, \_\_\_\_\_, until the Principal Sum has been paid.

[The County has designated the bonds as qualified tax-exempt obligations to qualify the bonds for the \$10,000,000 exception from the provisions of Section 265(b) of the Internal Revenue Code of 1986 relating to the disallowance of 100% of the deduction for interest expense allocable to tax-exempt obligations.]

The bonds of this issue are subject to redemption at the option of the County on any date upon seven days' notice, without penalty, plus accrued interest to the date of redemption.

Principal and interest (except for the final payment) shall be payable by check mailed by first class mail one business day prior to the payment date or delivered on the payment date to the person in whose name this bond is registered as of the fifteenth day of the month preceding such payment date. The Paying Agent shall be instructed to wire transfer payments by 1:00 p.m. (New York City Time) so such payments are received at the depository by 2:30 p.m. (New York City Time). The final payment of principal and interest of this bond shall be payable upon presentation of this bond at the office of \_\_\_\_\_, located in \_\_\_\_\_, \_\_\_\_\_, ("Registrar" or "Paying Agent") in lawful money of the United States of America.

This bond is one of an issue of bonds aggregating \_\_\_\_\_ Dollars (\$\_\_\_\_\_), of like tenor and effect, except as to numbering, date, denomination, rates of interest and dates of maturity, issued by Tippecanoe County pursuant to an ordinance adopted by the County Council of the County on \_\_\_\_\_, 1999 (the "Ordinance"), and in strict compliance with the governing statutes of the State of Indiana, particularly the Indiana Code, Title 36, Article 2, Title 8, Article 14, Chapter 2, and Title 5, Article 1, Chapter 14, for the purpose of providing the cost of certain road projects as described in the Ordinance, refunding interim notes issued in anticipation of bonds, and incidental expenses incurred in connection therewith, as more fully described in the Ordinance.

This bond is transferable by the registered owner hereof at the office of the Tippecanoe County Auditor, as Registrar and Paying Agent, upon presentation and surrender of this bond and on presentation of a duly executed written instrument of transfer or exchange acceptable to the Registrar, and thereupon a new bond or bonds of the same aggregate principal amount and maturity and in authorized denominations will be issued to the transferee or transferees in exchange therefor. This bond may be exchanged upon surrender hereof at the office of the Tippecanoe County Auditor, endorsed by the registered owner, for the same aggregate principal amount of bonds of the same maturity and in authorized denominations as the owner may request.

If this bond shall not be presented for redemption or payment on the date fixed therefor, the County may deposit in trust with its depository bank, an amount sufficient to pay such bond or the redemption price, as the case may be, and thereafter the registered owner shall look only to the funds so deposited in trust with said bank for payment and the County shall have no further obligation or liability in respect thereto. THE OWNER OF THIS BOND, BY ACCEPTANCE OF THIS BOND, HEREBY AGREES TO ALL OF THE TERMS AND PROVISIONS IN THE BOND ORDINANCE.

The bonds are issuable only in fully registered form in a minimum denomination of \$5,000.

The County and Registrar may deem and treat the person in whose name this bond is registered as the absolute owner hereof.

It is hereby certified and recited that all acts, conditions and things required by law and the constitution of the State of Indiana to be done precedent to and in the issuance, sale and delivery of

this bond have been properly done, happened and performed in regular and due form as provided by law, and that the bonds of this issue do not exceed any constitutional or statutory limitation of indebtedness.

The bonds do not constitute a general obligation of the County but are payable solely out of funds deposited in the County's Local Road and Street Account which have been irrevocably pledged to the payment of this bond. The County has reserved the right to issue additional bonds on a parity with this bond upon compliance with the conditions set forth in the Ordinance. **THE BONDS DO NOT CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY, BUT ARE PAYABLE SOLELY FROM FUNDS HELD IN THE ROAD AND STREET ACCOUNT. NEITHER THE FULL FAITH AND CREDIT OR THE TAXING POWER OF THE COUNTY IS PLEDGED TO THE PAYMENT OF THE BONDS.**

This bond shall not be valid or become obligatory for any purpose until authenticated by the Registrar.

IN WITNESS WHEREOF, Tippecanoe County, Indiana, has caused this bond to be executed in its name by the manual or facsimile signatures of its Board of Commissioners, its corporate seal to be hereunto affixed or imprinted manually or by facsimile and attested by the manual or facsimile signature of its Auditor.

TIPPECANOE COUNTY, INDIANA

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

(SEAL)

Attested:

\_\_\_\_\_  
Auditor

CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds described in the within mentioned Ordinance.

\_\_\_\_\_, as Registrar

\_\_\_\_\_  
Authorized Representative

ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within bond and all rights hereunder and hereby irrevocably constitutes and appoints \_\_\_\_\_, attorney, to transfer this bond on the bond register kept for the County, with full power of substitution in the premises.

Dated:\_\_\_\_\_

Signature guaranteed by:

NOTICE: Signature(s) must be guaranteed by an eligible guarantor particular, institution participating in a Securities Transfer Association recognized signature guarantee program

NOTICE: The signature to this assignment on the face of the within bond in every without alteration or enlargement or any change whatsoever

Section 6. The County Auditor is hereby authorized and directed to have the bonds and BANs prepared, and the Board of Commissioners and County Auditor are hereby authorized and directed to execute and attest the bonds and BANs in the form and manner herein provided. The County Auditor is hereby authorized and directed to deliver the bonds and BANs to the purchasers thereof after sale made in accordance with the provisions of this ordinance, provided that at the time of delivery the Treasurer shall collect the full amount which the respective purchasers have agreed to pay therefor, which amount shall not be less than 99.7% of the par value of the BANs or said bonds, as the case may be. The proceeds derived from the sale of the BANS and bonds shall be and are hereby set aside for application on the cost of the Projects, the refunding of the BANs, if issued, and the expenses necessarily incurred in connection with the BANs or the bonds, as the case may be. The proper officers of the County are hereby directed to draw all proper and necessary warrants, and to do whatever acts and things which may be necessary to carry out the provisions of this ordinance.

Section 7. Prior to the sale of the bonds the County Auditor shall cause to be published a notice of such sale in the *Lafayette Journal & Courier* and the *Lafayette Leader*, newspapers published in the County, two times, at least one week apart, the first publication made at least fifteen (15) days before the date of the sale and the second publication being made at least three (3) days before the date of the sale, all in accordance with IC 5-1-11 and IC 5-3-1. A notice of sale may also be published one time in the *Court & Commercial Record*, and a notice or summary notice may also be published in *The Bond Buyer* in New York, New York. The bond sale notice shall state the time and place of sale, the character and amount of the bonds, the maximum rate of interest thereon, the terms and conditions upon which bids will be received and the sale made, and such other information as the County Auditor and the attorneys employed by the County shall deem advisable and any summary notice may contain any information deemed so advisable. The notice may provide, among other things, that each bid shall be accompanied by a certified or cashier's check and that in the event the successful bidder shall fail or refuse to accept delivery of the bonds and pay for the same as soon as the bonds are ready for delivery, or at the time fixed in



the notice of sale, then said check and the proceeds thereof shall be the property of the County and shall be considered as its liquidated damages on account of such default; that bidders for the bonds will be required to name the rate or rates of interest which the bonds are to bear, not exceeding the maximum rate hereinbefore fixed, and that such interest rate or rates shall be in multiples of one-eighth ( $1/8$ ) or one-twentieth ( $1/20$ ) of one percent (1%). No conditional bid or bid for less than 99.7% of the par value of the bonds will be considered.

The bonds shall be awarded by the County Auditor to the best bidder who has submitted its bid in accordance with the terms of this ordinance, IC 5-1-11 and the notice of sale. The best bidder will be the one who offers the lowest net interest cost to the County, to be determined by computing the total interest on all of the bonds to their maturities and adding thereto the discount bid, if any, and deducting the premium bid, if any. The right to reject any and all bids shall be reserved. If an acceptable bid is not received on the date of sale, the sale may be continued from day to day thereafter without further advertisement for a period of thirty (30) days, during which time no bid which provides a higher net interest cost to the County than the best bid received at the time of the advertised sale will be considered.

The BANs shall be sold as described in Section 14.

The Board of Commissioners and the County Auditor may also take such other actions or deliver such other certificates as are necessary or desirable in connection with the issuance of the BANs and the bonds and the other documents needed for the financing as they deem necessary or desirable in connection therewith. Prior to delivering the BANs or the bonds the County Auditor shall obtain an investment letter from each of the purchasers of the BANs or the bonds, respectively, in which the purchaser certifies that it is a sophisticated investor, is familiar with the security of the BANs or the bonds, respectively, and understands the risks associated with the BANs or the bonds, respectively.

Prior to the delivery of the BANs or the bonds, the County Auditor shall obtain a legal opinion as to the validity of the BANs or the bonds, respectively, from Ice Miller Donadio & Ryan, bond counsel of Indianapolis, Indiana, and shall furnish such opinion to the purchaser of the BANs or the bonds, respectively.

Section 8. After the BANs and the bonds shall have been properly executed and authenticated, the County Auditor shall receive payment therefor, deliver the same to the respective purchasers thereof, and take receipt therefor. The proceeds of the sale of the BANs shall be deposited in the Project Fund created hereby. The proceeds from the sale of the bonds, to the extent not used to refund BANs, shall be paid into the Project Fund. The Project Fund shall be deposited in a separate account of the County and kept separate and apart from all other funds and

accounts of the County. The proceeds deposited in the Project Fund and investment earnings on amounts in the Project Fund shall be expended only to pay the costs of the Projects, refunding the BANs, if issued, and costs incurred in connection with the issuance of bonds and BANs. Any balance or balances remaining unexpended in the Project Fund after the completion of the Projects, which are not required to meet unpaid obligations incurred in connection with the acquisition and development of the Projects, shall either (i) be used to repay the BANs or the bonds or (ii) be used for the same purpose or type of project for which the BANs or bonds were issued, all in accordance with IC 5-1-13, as amended.

Section 9. Any accrued interest received by the County upon delivery of the bonds shall be deposited in the Payment Subaccount of the Road and Street Account (as identified below) and used to pay interest on the BANs or the bonds on the first payment date. Upon receipt of local road and street funds from the State of Indiana each month, the County shall deposit in the Payment Subaccount of the Local Road and Street Account ("Payment Subaccount") an amount sufficient to pay the principal of and interest on the BANs and the bonds together with all fiscal agency charges, due on the next payment date. All moneys in the Payment Subaccount of the Road and Street Account shall be used solely for the purpose of paying principal of and interest on the BANs or the bonds. The moneys deposited into the Payment Subaccount of the Road and Street Account, on an annual basis, shall not exceed the amount of principal and interest and any fiscal agency charges due on the BANs or the bonds for the next succeeding year. Any local road and street funds not needed to pay debt service on the BANs or the bonds may be used by the County for any purpose.

Section 10. The County reserves the right to authorize and issue additional BANs or bonds at any time ranking on a parity with the BANs. The County also reserves the right to authorize and issue additional bonds on a parity with the bonds authorized by this ordinance, subject to the following conditions:

(a) All interest and principal payments of the bonds shall have been paid to date in accordance with the terms thereof, with no payments in arrears;

(b) Payments of principal and interest on the additional parity bonds shall be payable semiannually in approximately equal installments on the first day of the months in which the BANs are payable if the BANs are payable annually or semiannually or payments of principal and interest shall be payable on the first day of each month in the years which such principal and interest are payable if the BANs are payable monthly.

Section 11. If, when the BANs or bonds issued hereunder shall have become due and payable in accordance with their terms or shall have been duly called for redemption or irrevocable

instructions to call the BANs or bonds, respectively, for redemption shall have been given, and the whole amount of the principal and the interest and the premium, if any, so due and payable upon all of the BANs or bonds, respectively, then outstanding shall be paid; or (i) sufficient moneys, or (ii) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America, the principal of and the interest on which when due will provide sufficient moneys, shall be held in trust for such purpose, and provision shall also be made for paying all fees and expenses for the redemption, then and in that case the BANs or bonds, respectively, issued hereunder shall no longer be deemed outstanding under this ordinance.

Section 12. (a) The County Auditor is hereby authorized to invest moneys pursuant to IC 5-1-14-3, IC 5-13 and the provisions of this ordinance at a yield (subject to applicable requirements of federal law to ensure such yield is the then current market rate) to the extent necessary or advisable to preserve the exclusion from gross income of interest on the bonds and BANs under federal tax law.

(b) The County Auditor shall keep full and accurate records of investment earnings and income from moneys held in the funds and accounts created or referenced herein. In order to comply with the provisions of the ordinance, the County Auditor is hereby authorized and directed to employ consultants or attorneys from time to time to advise the County as to requirements of federal law to preserve the tax exclusion.

Section 13. In order to preserve the exclusion of interest on the bonds and BANs from gross income for federal tax purposes under Section 103 of the Internal Revenue Code of 1986 as existing on the date of issuance of the bonds or BANs, as the case may be ("Code"), and as an inducement to the purchasers of the bonds and BANs, the County represents, covenants and agrees:

(a) The Projects will be available for use by members of the general public. Use by a member of the general public means use by natural persons not engaged in a trade or business. No person or entity other than the County or another state or local governmental unit will use more than 10% of the proceeds of the bonds or BANs or property financed by the bond or BAN proceeds other than as a member of the general public. No person or entity other than the County or another state or local governmental unit will own property financed by bond or BAN proceeds or will have actual or beneficial use of such property pursuant to a lease, a management, service or incentive payment contract, an arrangement including a take-or-pay or other type of output contract or any other type of arrangement that conveys other special legal entitlements and differentiates that person's or entity's use of such property from the use by the general public, unless such uses in the aggregate relate to no more than 10% of the proceeds of the BANs or the bonds, as the case may be. If the County enters into a management contract for all or a portion of the Projects, the terms of

the contract will comply with the applicable regulations and IRS Revenue Procedure 97-13, as it may be amended, supplemented or superseded from time to time, so that the contract will not give rise to private business use under the Code and the applicable regulations unless such use in the aggregate will not relate to more than 10% of the proceeds of the bonds or BANs, as the case may be.

(b) No more than 10% of the principal of or interest on the bonds or BANs is, under the terms of the bonds, BANs, this ordinance or any underlying arrangement, directly or indirectly, secured by an interest in property used or to be used for any private business use or payments in respect of such property, or to be derived from payments (whether or not to the County) in respect of property or borrowed money used or to be used for a private business use.

(c) No more than 5% of the bond or BAN proceeds will be loaned to any entity or person other than a state or local governmental unit. No more than 5% of the bond or BAN proceeds will be transferred, directly or indirectly, or deemed transferred to a non-governmental person in any manner that would in substance constitute a loan of the bond or BAN proceeds.

(d) The County reasonably expects, as of the date hereof, that the bonds and BANs will not meet either the private business use test described in paragraph (a) and (b) above or the private loan test described in paragraph (c) above during the entire term of the bonds or BANs, as the case may be.

(e) No more than 5% of the proceeds of the bonds or BANs will be attributable to private business use as described in (a) and private security or payments described in (b) attributable to unrelated or disproportionate private business use. For this purpose, the private business use test is applied by taking into account only use that is not related to any government use of proceeds of the issue (Unrelated Use) and use that is related but disproportionate to any governmental use of those proceeds (Disproportionate Use).

(f) The County will not take any action nor fail to take any action with respect to the bonds or BANs that would result in the loss of the exclusion from gross income for federal tax purposes on the bonds or BANs pursuant to Section 103 of the Code, nor will the County act in any other manner which would adversely affect such exclusion. The County covenants and agrees not to enter into any contracts or arrangements which would cause the bonds or BANs to be treated as private activity bonds under Section 141 of the Code.

(g) It shall not be an event of default under this ordinance if the interest on any bond or BAN is not excludable from gross income for federal tax purposes or otherwise pursuant to any provision of the Code which is not currently in effect and in existence on the date of issuance of the bonds or BANs, as the case may be.

(h) These covenants are based solely on current law in effect and in existence on the date of delivery of such bonds and BANs, as the case may be.

(i) The County represents that:

- (1) The County is a governmental unit with general taxing powers, which powers include the power to impose taxes of general applicability that, when collected, may be used for the general purposes of the County;
- (2) The BANs and the bonds are not private activity bonds as defined in Section 141 of the Code;
- (3) At least 95% of the net proceeds of the BANs and bonds will be used for local governmental activities of the County or of a governmental unit, the jurisdiction of which is entirely within the jurisdiction of the County;
- (4) The aggregate face amount of all tax-exempt bonds (other than private activity bonds) issued by the County and all units subordinate to the County, including on-behalf-of issuer and subordinate entities as those terms are defined in Regulations Section 1.148-8(c)(2), is not reasonably expected to exceed \$5,000,000 in calendar year 2000; and
- (5) The County has not been formed or availed of to otherwise avoid the purposes of the \$5,000,000 size limitation.

Therefore, the County meets the requirements of Section 148(f)(4)(D) of the Code and will not have to rebate any arbitrage profits to the United States.

(j) The County represents that:

- (1) The bonds and BANs are not private activity bonds as defined in Section 141 of the Code;
- (2) The County hereby designates the bonds and BANs as qualified tax-exempt obligations for purposes of Section 265(b) of the Code;
- (3) The reasonably anticipated amount of qualified tax-exempt obligations (including qualified 501(c)(3) obligations and tax-exempt leases but excluding other private activity bonds) which will be issued by the County, and all entities subordinate to the County during 2000 does not exceed \$10,000,000; and
- (4) The County will not designate more than \$10,000,000 of qualified tax-exempt obligations during 2000.

Therefore, if issued in 2000 the bonds and BANs qualify for the exception in the Code from the disallowance of 100% of the deduction by financial institutions of interest expense allocable to newly acquired tax-exempt obligations.

(k) It shall not be an event of default under this ordinance if the interest on any bond or BAN is not excludable from gross income for federal tax purposes or otherwise pursuant to any provision of the Code which is not currently in effect and in existence on the date of issuance of the bonds or BANs, as the case may be.

(l) All officers, employees and agents of the County are authorized and directed to provide certifications of facts and estimates that are material to the reasonable expectations of the County as of the date the bonds and BANs are issued and to enter into covenants on behalf of the County evidencing the County's commitments made herein. In particular, all or any officers of the County (including the Board of Commissioners, the Auditor and the Treasurer) are authorized to certify and enter into covenants for the County regarding the facts and circumstances and reasonable expectations of the County on the date the bonds and BANs are issued and the commitments made by the County in this Ordinance regarding the amount and use of the proceeds of the bonds and BANs.

Section 14. (a) The County, having satisfied all the statutory requirements for the issuance of its bonds, may elect to issue its BAN or BANs to a financial institution pursuant to a Bond Anticipation Note Purchase Agreement (the "BAN Purchase Agreement") to be entered into between the County and the purchaser of the BAN or BANs. The County Council hereby authorizes the issuance and execution of the BAN or BANs in lieu of initially issuing bonds to provide financing for the Projects until permanent financing becomes available. It shall not be necessary for the County to repeat the procedures for the issuance of its bonds, as the procedures followed before the issuance of the BAN or BANs are for all purposes sufficient to authorize the issuance of the bonds and the use of the proceeds to repay the BAN or BANs.

(b) The Board of Commissioners and the Auditor are hereby authorized to execute a BAN Purchase Agreement in such form or substance as they shall approve consistent with the terms of this ordinance acting upon the advice of counsel. The Board of Commissioners and the Auditor may also take such other actions or deliver such other certificates as are necessary or desirable in connection with the issuance of the BANs or the bonds and the other documents needed for the financing as they deem necessary or desirable in connection therewith.

Section 15. Distribution of a Private Placement Memorandum (preliminary and final) for the BANs and the bonds, respectively, prepared on behalf of the County by Financial Solutions Group, Inc., is hereby authorized and approved and the Board of Commissioners and the County

Auditor are authorized and directed to execute the Private Placement Memorandum on behalf of the County in a form consistent with this ordinance. The Board of Commissioners is hereby authorized to designate the Private Placement Memorandum as "nearly final" for purposes of Rule 15c2-12 as promulgated by the Securities and Exchange Commission.

Section 16. The County has determined that it may be beneficial to the County to have the bonds and BANs held by a central depository system pursuant to an agreement between the County and The Depository Trust Company, New York, New York ("Depository Trust Company") and have transfers of the Bonds and BANs effected by book-entry on the books of the central depository system ("Book Entry System"). The bonds and BANs may be initially issued in the form of a separate single authenticated fully registered bond or BAN for the aggregate principal amount of each separate maturity of the bonds and BANs, respectively. In such case, upon initial issuance, the ownership of such bonds and BANs shall be registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company.

With respect to the bonds and BANs registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, the County and the Paying Agent shall have no responsibility or obligation to any other holders or owners (including any beneficial owner ("Beneficial Owner")) of the bonds or BANs with respect to (i) the accuracy of the records of the Depository Trust Company, CEDE & CO., or any Beneficial Owner with respect to ownership questions, (ii) the delivery to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any notice with respect to the bonds or BANs including any notice of redemption, or (iii) the payment to any bondholder or noteholder, as the case may be (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any amount with respect to the principal of, or premium, if any, or interest on the bonds or BANs except as otherwise provided herein.

No person other than the Depository Trust Company shall receive an authenticated bond or BAN evidencing an obligation of the County to make payments of the principal of and premium, if any, and interest on the bonds and BANs pursuant to this ordinance. The County and the Registrar and Paying Agent may treat as and deem the Depository Trust Company or CEDE & CO. to be the absolute bondholder of each of the bonds and noteholder of each of the BANs for the purpose of (i) payment of the principal of and premium, if any, and interest on such bonds and BANs; (ii) giving notices of redemption and other notices permitted to be given to bondholders with respect to such bonds and BANs; (iii) registering transfers with respect to such bonds and BANs; (iv) obtaining any consent or other action required or permitted to be taken of or by bondholders; (v) voting; and (vi) for all other purposes whatsoever. The Paying Agent shall pay all principal of and premium, if

any, and interest on the bonds and BANs only to or upon the order of the Depository Trust Company, and all such payments shall be valid and effective fully to satisfy and discharge the County's and the Paying Agent's obligations with respect to principal of and premium, if any, and interest on the bonds and BANs to the extent of the sum or sums so paid. Upon delivery by the Depository Trust Company to the County of written notice to the effect that the Depository Trust Company has determined to substitute a new nominee in place of CEDE & CO., and subject to the provisions herein with respect to consents, the words "CEDE & CO." in this ordinance shall refer to such new nominee of the Depository Trust Company. Notwithstanding any other provision hereof to the contrary, so long as any bond or BAN is registered in the name of CEDE & CO., as nominee of the Depository Trust Company, all payments with respect to the principal of and premium, if any, and interest on such bonds and BANs and all notices with respect to such bonds and BANs shall be made and given, respectively, to the Depository Trust Company as provided in a representation letter from the County to the Depository Trust Company.

Upon receipt by the County of written notice from the Depository Trust Company to the effect that the Depository Trust Company is unable or unwilling to discharge its responsibilities and no substitute depository willing to undertake the functions of the Depository Trust Company hereunder can be found which is willing and able to undertake such functions upon reasonable and customary terms, then the bonds and BANs shall no longer be restricted to being registered in the register of the County kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, but may be registered in whatever name or names the bondholders or noteholders, as the case may be, transferring or exchanging the bonds and BANs shall designate, in accordance with the provisions of this ordinance.

If the County determines that it is in the best interest of the bondholders or noteholders that they be able to obtain certificates for the fully registered bonds or BANs, as the case may be, the County may notify the Depository Trust Company and the Registrar, whereupon the Depository Trust Company will notify the Beneficial Owners of the availability through the Depository Trust Company of certificates for the bonds and BANs. In such event, the Registrar shall prepare, authenticate, transfer and exchange certificates for the bonds and BANs as requested by the Depository Trust Company and any Beneficial Owners in appropriate amounts, and whenever the Depository Trust Company requests the County and the Registrar to do so, the Registrar and the County will cooperate with the Depository Trust Company by taking appropriate action after reasonable notice (i) to make available one or more separate certificates evidencing the fully registered bonds and BANs of any Beneficial Owner's Depository Trust Company account or (ii) to



arrange for another securities depository to maintain custody of certificates for and evidencing the bonds and BANs.

If the bonds or BANs shall no longer be restricted to being registered in the name of the Depository Trust Company, the Registrar shall cause said bonds or BANs to be printed in blank in such number as the Registrar shall determine to be necessary or customary; provided, however, that the Registrar shall not be required to have such bonds or BANs printed until it shall have received from the County indemnification for all costs and expenses associated with such printing.

In connection with any notice or other communication to be provided to bondholders or noteholders by the County or the Registrar with respect to any consent or other action to be taken by bondholders or noteholders, the County or the Registrar, as the case may be, shall establish a record date for such consent or other action and give the Depository Trust Company notice of such record date not less than fifteen (15) calendar days in advance of such record date to the extent possible.

So long as said bonds or BANs are registered in the name of the Depository Trust Company or CEDE & CO. or any substitute nominee, the County and the Registrar and Paying Agent shall be entitled to request and to rely upon a certificate or other written representation from the Beneficial Owners of the bonds or BANs or from the Depository Trust Company on behalf of such Beneficial Owners stating the amount of their respective beneficial ownership interests in the bonds or BANs and setting forth the consent, advice, direction, demand or vote of the Beneficial Owners as of a record date selected by the Registrar and the Depository Trust Company, to the same extent as if such consent, advice, direction, demand or vote were made by the bondholders or noteholders, as the case may be, for purposes of this ordinance and the County and the Registrar and Paying Agent shall for such purposes treat the Beneficial Owners as the bondholders or noteholders, as the case may be. Along with any such certificate or representation, the Registrar may request the Depository Trust Company to deliver, or cause to be delivered, to the Registrar a list of all Beneficial Owners of the bonds and BANs, respectively, together with the dollar amount of each Beneficial Owner's interest in the bonds and BANs, respectively and the current addresses of such Beneficial Owners.

Section 17. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 18. This ordinance shall be in full force and effect immediately upon its passage.

Adopted and passed this the 14th day of December, 1999.

TIPPECANOE COUNTY COUNCIL

Yes	<div>Jeffrey Kessler, President</div>
Yes	<div>Connie Basham, Vice President</div>
Yes	<div>David S. Byers</div>
Yes	<div>Margaret K. Bell</div>
Yes	<div>Jeffrey A. Kemper</div>
Yes	<div>David S. Koltick</div>
Yes	<div>Ronald L. Fruitt</div>

ATTEST:

Robert Plantenga, Auditor

EXHIBIT A

PROJECTS TO BE FUNDED WITH  
TIPPECANOE COUNTY ROAD BOND TAX ANTICIPATION NOTES

McCarty Lane extension from CR 500 East to State Road 26 and upon completion thereof the improvement of such arterial roads (as defined in IC 8-14-2-1) and local county roads (as defined in IC 8-14-2-1) as may from time to time be determined by the Board of Commissioners of Tippecanoe County at an estimated preliminary cost of \$2,300,000.00.